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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 23rd May 2012

No. 4061—li/1(B)-61/2004 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th October 2011 in Industrial Dispute Case No. 75 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Digjam Showroom, Naya Sarak, Cuttack and its workman Shri Shiva Prusty, Salesman referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 75 OF 2004

Dated the 29th October 2011

Present :

**S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court,
Bhubaneswar.**

Between :

**The Management of M/s Digjam
Showroom, Naya Sarak,
Cuttack.**

... First Party—Management

And

**Its Workman,
Shri Shiva Prusty, Salesman**

... Second Party—Workman

Appearances :

Smt. D. Agarwall

... For the First Party— Management

Shri S. Prusty

... For the Second Party— Workman himself

AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 10311—li/1 (B)-61/2004-LE., dated the 16th November 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Shiva Prusty, Salesman with effect from the 4th August 2003 by the management of M/s Digjam Showroom, Naya Sarak, Cuttack is legal and/or justified ? If not, what relief Shri Prusty is entitled to ?”

3. The case of the workman, in brief, is that he was working as Salesman under the management with effect from the 6th August 2001. He rendered continuous service under the management till 4-8-2003. But the management without any rhyme or reason terminated him from the service without following the provisions of Section 25-F of the Industrial Disputes Act, 1947. While challenging the action of the management in terminating him from service with effect from 4th August 2003, the workman has now prayed for his reinstatement in service with full back wages and other service benefits.

4. The management, on the other hand, filed written statement opposing the claim of the workman. According to the management, while the workman was working as Purchase Agent and also Salesman, received confidential allegations of corrupt practice against him, for which he was warned for several times. Thereafter from the 4th August 2003 the workman absented himself voluntarily and did not turn-up to do his duty. So in this background, the management has prayed that the reference may kindly be answered in favour of the management.

5. In view of the above pleadings of the parties, the following issues are framed :—

ISSUES

- (i) “Whether the termination of services of Shri Shiva Prusty, Salesman with effect from the 4th August 2003 by the management of M/s Digjam Showroom, Naya Sarak, Cuttack is legal and /or justified ?
- (ii) If not, what relief Shri Prusty is entitled to ?”

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents under the cover of Exts.1 to 7. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

7. Issue Nos. (i) and (ii)—Both the issues are taken up together for discussion for convenience.

In his affidavit evidence the workman has supported and corroborated the facts already averred in his statement of claim. In his affidavit evidence, the workman has categorically stated that he was appointed as Salesman under the management with effect from the 6th August 2001 and he rendered continuous service till 3-8-2003. But the management without any rhyme or reason had

illegally terminated him from service with effect from the 4th August 2003 without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947. The evidence of the workman in this respect has nowhere been challenged by the management in the evidence. In absence of any rebuttal evidence, I find no cogent reason to disbelieve his evidence. Rather the unchallenged testimony of the workman clearly goes to show that he had rendered continuous service with effect from the 6th August 2001 till 3-8-2003 when he was illegally terminated from service with effect from the 4th August 2003 and the management while terminating the workman from service had not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947, which in my view are in complete violation of the provisions of the Industrial Disputes Act, 1947. Law is well settled that the provisions of Section 25-F of the Industrial Disputes Act, 1947 is mandatory and any violation thereof will render the termination *void ab initio*. After carefully examining the evidence on record and the documents already relied upon by the workman, I am of the considered view that the termination of service of the workman with effect from the 4th August 2003 by the management is illegal, unjustified and against the mandate of the Section 25-F of the Industrial Disputes Act, 1947. In this view of the matter, the workman is entitled to the relief of reinstatement.

8. As regards back wages, when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of full back wages is not justified. But on the facts and circumstances of the present case, instead of granting full back wages, 50% back wages will meet the ends of justice. Hence both the issues are answered accordingly.

9. Hence ordered :

That the termination of services of Shri Shiva Prusty, Salesman with effect from the 4th August 2003 by the management of M/s Digjam Show Room, Naya Sarak, Cuttack is neither legal nor justified. The workman Shri Prusty is entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award with within a period of one month from the date of its publication, failing which the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED

29-10-2011

Presiding Officer

Labour Court

Bhubaneswar

S.A.K.Z. AHAMED

29-10-2011

Presiding Officer

Labour Court

Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government